STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
DOUGLAS H. CASEMENT D/B/A DOUGLAS H. CASEMENT ENTERPRISES AND PURPLE PARLOR CAR WASH	:	DETERMINATION DTA NOS. 807277 AND 807411
for Revision of Determinations or for Refunds of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period June 1, 1984 through May 31, 1988.	:	

Petitioner, Douglas H. Casement d/b/a Douglas H. Casement Enterprises, 58 Ridge Road, Poughkeepsie, New York 12603, and d/b/a Purple Parlor Car Wash, 264 Dutchess Turnpike, Poughkeepsie, New York 12603, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1984 through May 31, 1988.

A consolidated hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 462 Washington Street, Buffalo, New York, on October 31, 1990 at 1:15 P.M., with all briefs to be submitted by January 30, 1991. Petitioner appeared by Saperston and Day, P.C. (Raymond N. McCabe, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Peter J. Martinelli, Esq., of counsel).

ISSUES

I. Whether petitioner's coin-operated car wash operations are exempt from sales tax as "laundering services" pursuant to Tax Law § 1105(c)(3)(ii).

II. Whether the Division of Taxation's interpretation of Tax Law § 1105(c)(3)(ii) is irrational and arbitrary because it imposes a double taxon operators of coin-operated car washes which is not imposed on owners of coin-operated laundromats or "tunnel" car washes.

III. Whether, by treating coin-operated car washes as taxable service providers while exempting coin-operated laundromats from tax, the Division has imposed an unreasonable and

arbitrary classification which violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.

IV. Whether the Division of Taxation's assessments herein with respect to the period June 1, 1984 through August 31, 1985 were barred by the statute of limitations on assessment (Tax Law § 1147).

FINDINGS OF FACT

Petitioner, Douglas H. Casement, resides at 58 Ridge Road, Poughkeepsie, New York 12603.

Petitioner is a carpenter contractor and also owns two coin-operated self-service car washes (referred to herein as "coin-operated" car washes).

Petitioner maintains separate books and records for his carpentry and for his car wash operations. For purposes of convenience, petitioner's car wash operations have been referred to during the course of the audit and this proceeding as "Purple Parlor Car Wash" and his carpentry business has been referred to as "Douglas H. Casement Enterprises". Both businesses are sole proprietorships.

On August 19, 1988, following an audit, the Division of Taxation issued to Douglas H. Casement Enterprises a Notice of Determination and Demand for Payment of Sales and Use Taxes Due which assessed $1,574.15 in tax due, plus penalty and interest for the period June 1, 1984 through May 31, 1986. Also on August 19, 1988 the Division issued a second notice of determination to Douglas H. Casement Enterprises which assessed penalties totaling $51.26 for the period June 1, 1985 through May 31, 1986.

On August 19, 1988, again following an audit, the Division issued to Douglas Casement d/b/a Purple Parlor Car Wash two notices of determination and demands for payment of sales and use taxes due which together assessed $42,417.50 in tax due, plus penalty and interest, for the period June 1, 1984 through May 31, 1988. Also on August 19, 1988 the Division issued an additional notice of determination to Douglas Casement d/b/a Purple Parlor Car Wash which assessed penalties totaling $3,451.90 for the period June 1, 1985 through May 31, 1988.

Petitioner has been engaged in the coin-operated car wash business for 23 years.

During the audit period, petitioner owned and operated two coin- operated car washes consisting of a total of eleven bays.

A coin-operated, self-service car wash operates in a different manner than a "tunnel" car wash or a "rollover" car wash.

At a coin-operated, self-service car wash the customer drives his car into a bay and inserts quarters into a meter which activates washing equipment for a predetermined period of time. The customer directs a high pressure water spray from a wand which is connected to an equipment room. The equipment room provides hot, softened water, soap and wax to the customer. The customer selects the additives he desires by operating a switch located in the bay. He then washes his car by walking around the vehicle and directing the high pressure spray with the wand.

A customer of a tunnel car wash pays a fee to a cashier and his car is pulled through a tunnel-shaped building where it is washed by machine.

A customer of a rollover car wash inserts coins into a machine and drives his car into a bay where it is washed by machinery while the car either remains stationary or is driven through the bay by the customer.

A customer of a laundromat operates coin-operated washing machines by inserting coins into a slot on each machine which provides the customer with a predetermined washing cycle. The customer washes his clothing by inserting clothes into a tub within the machine, and the machine provides hot water and performs the washing cycle selected by the customer.

An operator of a tunnel car wash collects sales tax from its customers through the use of cashiers who collect the tax at the time the fee for the service is collected.

Both coin-operated car washes and coin-operated laundromats use attendants primarily to clean and maintain equipment and to provide instruction to customers on the use of the equipment. Attendants do not collect money from the customers and do not handle money collected by the machines.

Between approximately 1946 through 1978, operators of coin- operated laundromats and self-service car washes belonged to the same trade association, the National Automatic Laundry and Cleaning Council.

One trade publication of the car wash industry is the Auto Laundry News.

Petitioner incurs numerous costs in connection with the operation of his self-service car washes. These include water, propane gas to heat the water, gas to heat the floors (to prevent the formation of ice), electricity, detergents and waxes.

During the audit period, petitioner made purchases of propane gas, gas and electricity, supplies and parts, and equipment in connection with his car wash operations.

In its notices of determination and demands for payment of sales and use taxes due dated August 19, 1988, the Division of Taxation included assessments for the quarters ending August 31, 1984, November 30, 1984, February 28, 1985 and May 31, 1985.

Sales tax auditor Richard Incremona conducted the audit of petitioner's carpentry and car wash businesses. On or about June 14, 1988, Mr. Incremona presented to petitioner, and petitioner executed, two forms which purport to extend the period of limitation on assessment for the period June 1, 1984 through May 31, 1985 to September 20, 1988.

At the time he presented the forms to petitioner, Mr. Incremona advised that he (Incremona) could not complete the audit that day and that petitioner had to sign the forms to allow him (Incremona) to return to finish the audit at a later time.

The forms which Mr. Incremona presented to petitioner, and which petitioner signed, were preprinted forms of the Division of Taxation encaptioned "Consent Extending Period of Limitation for Assessment of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law." At the time Mr. Incremona gave these forms to petitioner, none of the blanks on the preprinted forms had been completed.

Petitioner did not see copies of the completed consents until they were shown to him at a conciliation conference held before the Bureau of Conciliation and Mediation Services.

Petitioner agreed with Mr. Incremona's computation of sales tax against Douglas H.

Casement Enterprises, and contested only the inclusion of assessments prior to August 31, 1985.

Petitioner was not seeking, and had no reason to seek any form of legislative relief with respect to the proposed assessment against Douglas H. Casement Enterprises.

Although petitioner was seeking legislative repeal of the sales tax on coin-operated car washes during the period the audit was conducted, his discussions with Mr. Incremona concerning legislative relief were "off the record". At no time did petitioner request that the Division of Taxation hold its audit in abeyance pending some form of legislative relief.

Mr. Incremona was unavailable to testify at the hearing, and the Division of Taxation introduced an affidavit executed by Mr. Incremona in lieu of testimony.

Petitioner submitted proposed findings of fact numbered "1" through "33". These requested findings are accepted and incorporated herein with the following exceptions: Proposed findings "12" and "13" are rejected for the reasons discussed in Conclusion of Law "E". Proposed finding "15" is rejected as being in the nature of a conclusion of law rather than a finding of fact. Proposed finding "19" (see Finding of Fact "18" herein) is rejected to the extent that this proposed finding listed specific expenditure amounts and indicated that petitioner paid sales tax on all such expenditures. Insufficient evidence was submitted to establish said expenditure amounts and that all sales tax was paid. Proposed findings "25", "26", and "28" involved the substance of conversations between petitioner and the auditor. These proposed findings are rejected as insufficient evidence on the substance of these conversations was presented to establish such proposed findings as fact herein.

CONCLUSIONS OF LAW

A. Tax Law § 1105(c)(3) imposes sales tax upon the receipts from, inter alia, the services of "maintaining, servicing or repairing tangible personal property...whether or not the services are performed directly or by means of coin-operated equipment or by any other means...." Subparagraph (ii) of Tax Law § 1105(c)(3) excepts from the imposition of such tax "any receipts from laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe

shining."

B. Petitioner contends that his car wash service constitutes "laundering" within the meaning of the above-quoted exception and that therefore such services are not subject to tax under Tax Law § 1105(c)(3). In support, petitioner notes the rule of statutory construction that words of a statute should be interpreted where possible in their ordinary everyday sense (Automatique v. Bouchard, 97 AD2d 183, 470 NYS2d 791). Pursuant to this maxim petitioner notes that Webster's Third International Dictionary Unabridged (1976 Edition) defines "laundering" as "the process of washing or cleansing". Petitioner notes that there are two usages of this word provided by Webster's Third International Dictionary: one refers to clothing and the other refers to "coal undergo[ing] another laundering as it passes over screens for final sizing." In response to petitioner's argument, the Division agrees with the legal maxim cited by petitioner, but contends that the ordinary everyday meaning of "laundering" concerns cloth or clothing. In support, the Division marshalls Webster's Ninth New Collegiate Dictionary (Merriam - Webster 1984) and notes that three of four definitions of "launder" contained therein refer to clothing. (One definition refers to the laundering of money.)

C. If it were merely necessary to ascertain whether the meaning of "laundering", by itself, could encompass a broader meaning than the cleaning or washing of cloth or clothes, then petitioner's position might have some merit. The purpose of this determination, however, is not lexicographic; rather, the purpose is statutory construction. It is necessary, therefore, to ascertain the intent of the Legislature in enacting the provision in question, and to examine the use of the term in context in order to discover its meaning. (Third National Bank in Nashville v. Impac Limited, Inc., 432 US 312, 321, 97 S Ct 2307, 2313.) Under the rule of noscitur a sociis, the meaning of a word in a statute may be ascertained by reference to words associated with it in context (Popkin v. Security Mutual Insurance Company of New York, 48 AD2d 46, 367 NYS2d 492, 495). This rule of construction is particularly applicable where the word in question is part of a list (Third National Bank in Nashville v. Impac Limited, Inc., supra, at 322).

With respect to the provision in question, the words associated with "laundering" are "dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining." Clearly, these words refer to services involving clothes, cloth or leather goods. In this context the meaning of "laundering" must also refer to the process of cleaning clothes or cloth. Accordingly, petitioner's contention that this term as used in the statute includes car washing is rejected.

D. The foregoing statutory construction is supported by several determinations of the former State Tax Commission (see, Matter of Daniel Kailburn and Heather Kailburn d/b/a East Hill Car Wash, State Tax Commn., June 9, 1987; Matter of Delta Sonic Car Wash Systems, Inc., State Tax Commn., January 9, 1987, confirmed 142 AD2d 828; Matter of Douglas H. Casement Enterprises, State Tax Commn., November 27, 1981; Matter of Patsy Scarano d/b/a Easy Way Car Wash, State Tax Commn., December 3, 1975), and by the Division's regulations (see 20 NYCRR 527.5[a][3], Example 5).

Additionally, in Matter of Delta Sonic Car Wash Systems, Inc. v. Chu (142 AD2d 828, 530 NYS2d 341), the court held that the petitioner's facilities, which comprised several tunnel car wash facilities, provided a taxable service to vehicles (id., 530 NYS2d at 342). In support, the court cited the statute (Tax Law § 1105[c][3]) and the regulations (20 NYCRR 527.5[a][3], Example 5). Although the specific question of whether car washing services constituted laundering services was apparently not before the court, the court did find the services to be taxable under Tax Law § 1105(c)(3). The facts essential to determine taxability under section 1105(c)(3) herein are indistinguishable from those in Delta Sonic. The fact that petitioner herein provided a car washing service via coin-operated equipment while the petitioner in Delta Sonic provided service through tunnel facilities is insignificant. Both petitioner herein and the petitioner in Delta Sonic provide a taxable car washing service to vehicles.

E. Petitioner also contends that the assessment of tax herein results in an impermissible double taxation upon petitioner, since petitioner must pay tax on its purchases of car washing equipment and certain supplies and must also pay tax on its receipts derived from the provision of services to customers. This contention is rejected, for there is no double taxation in the

instant matter. While petitioner must pay tax on purchases of equipment and certain supplies used in providing his services (see Tax Law § 1101[b][4]; 20 NYCRR 526.6[c][6]), the tax on car washing services is imposed upon petitioner's customers and not petitioner. Petitioner's obligation was to collect tax from the customer (Tax Law § 1132[a]). Where petitioner failed to collect such tax, petitioner became personally liable for the tax required to be collected (Tax Law § 1133[a]). Contrary to petitioner's assertion, he was not physically prevented from collecting sales tax because his receipts were collected by deposit of coins into a machine. Nor, clearly, was petitioner relieved of his obligations under Tax Law §§ 1132(a) and 1133(a) because he collected receipts through a machine. Tax Law § 1105(c)(3) specifically states that the tax is imposed on the services enumerated therein "whether or not the services are performed...by means of coin-operated equipment." As to petitioner's claimed difficulty in collecting the tax, the Division's regulations provide for the use of a "unit price" method of accounting for sales tax where no written receipt is given to the customer (20 NYCRR 532.1[b][4]). Under this method, the "unit price" is the price, including sales tax, at which the sale is recorded. Customers must be made aware of the inclusion of sales tax in the total sales price by display of a placard stating that the prices of all taxable items include sales tax (id.). Petitioner could have, and should have, collected sales tax from his customers by using the unit price method. (See, Matter of Daniel Kailburn and Heather Kailburn d/b/a East Hill Car Wash, supra; Matter of Douglas H. Casement Enterprises, supra.)

F. Finally, petitioner contended that the statute as applied denies him equal protection under the law in violation of the United States Constitution. Specifically, petitioner contended that by excepting receipts from coin-operated laundries from sales tax while imposing sales tax upon the receipts from coin-operated car wash, he is being denied equal protection. Petitioner contended that there was "no conceivable rational basis" for this disparate treatment.

G. "Legislatures possess the greatest freedom in matters of taxation, and the resolution of equal protection claims is not achieved by demonstrating that a particular tax statute or regulation results in even flagrant unevenness (Matter of Long Is. Light Co. v. State Tax Commn., 45 NY2d 529, 535). The proper standard of review is a rational basis test, under which a statute will be upheld absent a showing that the different treatment of different persons is so unrelated to the

> achievement of a legitimate purpose that it becomes readily apparent that the Legislature's actions were irrational (Vance v. Bradley, 440 US 93, 97, 99 S Ct 939, 942, 59 LEd2d 171)." (Greco Bros. v. Chu, 113 AD2d 622, 497 NYS2d 206, 209.)

H. Petitioner's equal protection argument is based upon a misinterpretation of Tax Law § 1105(c)(3). The statute as written and as applied under the instant circumstances does not draw a line between coin-operated car washes and coin-operated laundromats. Rather, the statute imposes tax on the services of installing, maintaining, servicing or repairing tangible personal property. The statute thus taxes a wide variety of services, including the service of car washing, "whether or not the services are performed directly or by means of coin-operated equipment or by any other means" (Tax Law § 1105[c][3]). Subparagraph (ii) of section 1105(c)(3) carves out an exception for certain enumerated services involving cloth, clothes or leather goods. This subparagraph excepts laundry services from tax, whether performed by coin-operated equipment or by other means. This classification is rational within the standard enunciated in Greco Bros. v. Chu (supra).

I. Tax Law § 1147(b) imposes a period of limitations for the assessment of sales and use taxes of no more than three years from the date of filing of a return. In the instant matter, petitioner contends that the Division's assessments for the sales tax quarters ended August 31, 1984, November 30, 1984, February 28, 1985, and May 31, 1985 was barred by Tax Law § 1147(b). It is noted that the specific dates when petitioner filed sales tax returns for these periods are not in the record. Inasmuch as both parties agreed at hearing that the validity of the consents extending the period of limitations shall be dispositive of the statute of limitations issue, it is proper to presume that petitioner's sales tax returns for these periods were filed between June 14, 1985 and August 20, 1985.

J. Tax Law § 1147(c) provides as follows:

> "Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. If a taxpayer has consented in writing to the extension of the period for assessment, the period for filing an application for credit or refund pursuant to section eleven hundred thirty-nine shall not expire prior to six months after the

expiration of the period within which an assessment may be made pursuant to the consent to extend the time for assessment of additional tax."

K. The statute thus requires consents given pursuant to Tax Law § 1147(c) to be "in writing". Moreover, the language of the statute (and the language of the consent forms) clearly contemplates that such written consent specify the taxable period to which it refers, as the statute makes reference to "the period so extended." The language of the statute also contemplates an extension period of definite length, as it refers to the "expiration" of the extension period.

Here, petitioner signed two blank consent forms. Petitioner's signature on such forms clearly does not constitute a written consent to extend specific taxable periods for a definite length of time as required by Tax Law § 1147(c). Indeed, by his signature on two blank forms it does not appear that petitioner consented to anything. Accordingly, in the absence of a written consent to extend the period of limitations pursuant to Tax Law § 1147(c), the Division's assessments against Douglas Casement d/b/a Purple Parlor Car Wash and Douglas Casement Enterprises with respect to the quarters ended August 31, 1984, November 30, 1984, February 28, 1985 and May 31, 1985 were time-barred and must be cancelled.

L. The Division contended that even if petitioner signed blank consent forms or even if the Division had failed to advise petitioner of the nature and purpose of the consent forms, the notices of determination were in no part time-barred because "petitioner was not prejudiced". The Division notes that if petitioner had not signed the consents, the Division would have timely issued the notices of determination in any event. The Division expressed its concern that under such circumstances the notices would have necessarily been rushed through the system and mistakes might have been made. Moreover, the Division contends, inasmuch as petitioner exercised his right to petition the notices, he has suffered no prejudice as a result of the Division's inaction.

The Division's dilemma of either issuing an inaccurate notice or violating the statute of limitations could easily have been avoided in the first instance by not wasting (by its failure to act) all but six days of the three-year statutory period. In any event, the Division's contention

that petitioner was not prejudiced by its failure to timely issue the notices at issue is totally without merit and warrants no further discussion.

M. The petitions of Douglas H. Casement d/b/a Douglas H. Casement Enterprises and d/b/a Purple Parlor Car Wash are granted to the extent indicated in Conclusion of Law "K". The Division is directed to adjust the notices of determination and demands for payment of sales and use taxes due herein in accordance therewith. Except as so granted, the petitions are in all other respects denied.

DATED: Troy, New York

8/8/91

ADMINISTRATIVE LAW JUDGE